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TransPerfect Global, Inc.; TransPerfect Translations
International, Inc.; and Translations.com, Inc.
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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 OAKLAND DIVISION
20

21 TRANSPERFECT GLOBAL, INC.,
TRANSPERFECT TRANSLATIONS
22 INTERNATIONAL, INC., AND
TRANSLATIONS.COM, INC.,
23

24 Plaintiffs/Counterclaim-Defendants,
v.
25
26 MOTIONPOINT CORPORATION,
27 Defendant/Counterclaimant.
28

Case No. CV 10-02590 CW (JCS)

**TRANSPERFECT'S NOTICE OF COSTS
AMENDED BILL OF COSTS
AND
AMENDED BILL OF COSTS**

Judge: Hon. Claudia Wilken

TO THE CLERK OF THE COURT, TO DEFENDANT AND COUNTERCLAIM
PLAINTIFF MOTIONPOINT CORPORATION, AND TO COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 54(d)(1) and Civil L.R. 54-1,
4 Plaintiffs and Counterclaim Defendants TransPerfect Global, Inc., TransPerfect Translations
5 International, Inc., and Translations.com, Inc. (collectively “TransPerfect”) hereby submit their
6 Amended Bill of Costs. TransPerfect’s Amended Bill of Costs is based on this Notice, the
7 summary of costs below, the accompanying declaration of Jim Iseman, the first and second
8 declarations of Nikolaus A. Woloszczuk and attached exhibits with the itemized costs, the
9 pleadings, orders and papers on file herein, and any matters of which the Court may take judicial
10 notice, and additional evidence and argument as may be later presented.

Amended Bill of Costs

12 On November 15, 2013, this Court entered judgment in the above-entitled action against
13 Defendant and Counterclaimant MotionPoint Corporation, and ordered that TransPerfect recover
14 its costs. (D.N. 467.) Pursuant to Fed. R. Civ. P. 54(d)(1) and Civil L.R. 54-1, TransPerfect
15 respectfully requests the Clerk to tax the following as costs:

Civil L.R. 54-3(a) (Fees for Filing and Service of Process)	\$16,206.90
Civil L.R. 54-3(b) (Reporters' Transcripts)	\$20,449.57
Civil L.R. 54-3(c) (Depositions)	\$111,091.83
Civil L.R. 54-3(d) (Reproduction and Exemplification)	\$273,654.16
Civil L.R. 54-3(e) (Witness Expenses)	\$10,418.36
Total Costs	\$431,820.82

1. Clerk's Filing Fees and Service of Subpoenas

²⁸ U.S.C. § 1920(1) permits recovery of “fees of the clerk and marshal,” in this district

1 this includes both fees paid directly to the Court Clerk and the costs of private service of
 2 subpoenas. Civ. L.R. 54-3(a)(2). TransPerfect incurred clerk fees of \$1,475 for filing court
 3 documents and pro hac vice admissions, and \$14,731.90 for service of subpoenas. While there is
 4 no rule regarding pro hac vice fees in the 9th Circuit, this Court has allowed recovery of such
 5 fees. *Kalitta Air, LLC v. Cent. Tex. Airborne Sys.*, No. C 96-2494, 2012 U.S. Dist. LEXIS
 6 172679, *8 (N.D. Cal. Dec. 5, 2012). These necessary costs are documented in Exhibit A to the
 7 First Declaration of Nikolaus A. Woloszczuk. (D.N. 474.)

8 2. Reporters' Transcripts of Hearings

9 28 U.S.C. § 1920 allows recovery of “fees for printed or electronically recorded
 10 transcripts necessarily obtained for use in the case.” Civil L.R. 54-3(b)(1) additionally specifies
 11 that “the costs of transcripts necessarily obtained for an appeal is allowable.” Courts in this
 12 district have found transcripts taxable where the hearing “was of paramount importance in the
 13 case.” *See MEMC Elec. Materials v. Mitsubishi Materials*, No. C-01-4925, 2004 U.S. Dist.
 14 LEXIS 29359, *8-9 (N.D. Cal. Oct. 22, 2004) (approving of transcripts costs for Markman
 15 hearing); *eBay Inc. v. Kelora Sys., LLC*, C 10-4947, 2013 WL 1402736, *11 (N.D. Cal. Apr. 5,
 16 2013) (allowing cost of transcript from summary judgment and non-infringement hearing).

17 TransPerfect also incurred costs obtaining transcripts for each day of trial, these
 18 transcripts were necessarily obtained in anticipation of an appeal which MotionPoint has
 19 confirmed is forthcoming. Paul Demery, *In a Web Translation Patent Battle, the Jury Sides with*
 20 *TransPerfect*, July 29, 2013, [http://www.internetretailer.com/mobile/2013/07/29/jury-sides-
 21 transperfect-web-translation-patent-battle](http://www.internetretailer.com/mobile/2013/07/29/jury-sides-transperfect-web-translation-patent-battle) (MotionPoint “said in a statement that it ‘intends to
 22 appeal the jury’s verdict and will pursue all other avenues to protect its intellectual property.’”).
 23 *See Affymetrix, Inc. v. Multilyte Ltd.*, No. C 03-03779, 2005 U.S. Dist. LEXIS 41177, *5-6 (N.D.
 24 Cal. Aug. 26, 2005) (“It was reasonable for Affymetrix to incur the expense of transcripts for all
 25 court proceedings, given that this case was so contentiously litigated. . . . It is only expected that
 26 both parties found it necessary to obtain transcripts for appeal.”) (emphasis added); *Asyst Techs.*
 27 *v. Emtrak Inc.*, No. C 98-20451, 2009 U.S. Dist. LEXIS 23834, *5 (N.D. Cal. Mar. 13, 2009)
 28 (allowing recovery of costs for daily trial transcripts in a patent infringement trial because the

1 prevailing party “knew with virtual certainty that however the trial came out the losing party
 2 would appeal.”) Given the parties’ relationship as competitors, and considering the amount of
 3 damages at stake and the likelihood that an injunction would issue, it was reasonable for
 4 TransPerfect to obtain daily transcripts in anticipation of an appeal. A spreadsheet of these costs
 5 and true and correct copies of invoices supporting these costs are attached as Exhibit B to the
 6 First Declaration of Nikolaus A. Woloszczuk. (D.N. 474.)

7 3. Depositions

8 Civil L.R. 54-3(c) permits the recovery of “the cost of an original and one copy of any
 9 deposition (including videotaped depositions) taken for any purpose in connection with the
 10 case.” Courts in this district have awarded costs for both stenographic transcripts and copies of
 11 video from the same deposition, acknowledging that “[i]n patent cases, costs for both have been
 12 allowed as commonplace practice.” *eBay*, 2013 WL 1402736, at *11 (internal quotation marks
 13 and citation omitted); *see also Plantronics, Inc. v. Aliph, Inc.*, C 09-01714, 2012 WL 6761576,
 14 *7 (N.D. Cal. Oct. 23, 2012). Civil L.R. 54-3(c)(3) also allows recovery of the cost of
 15 “reproducing exhibits to depositions.” A spreadsheet of these costs and true and correct copies
 16 of invoices supporting these costs are attached as Exhibit B to the First Declaration of Nikolaus
 17 A. Woloszczuk. (D.N. 474.)

18 4. Reproduction and Exemplification of Discovery Documents

19 Under 28 U.S.C. § 1920(3-4) and Civil L.R. 54-3(d), the costs of reproducing discovery
 20 documents including certain costs associated with electronic discovery production are taxable.
 21 *In re Ricoh Co. Patent Litig.*, 661 F.3d 1361, 1365 (Fed. Cir. 2011) (“the costs of producing a
 22 document electronically can be recoverable under section 1920(4).”); *eBay*, 2013 WL 1402736,
 23 at *7 (allowing recovery of electronic discovery costs such as “scanning paper documents,
 24 electronic scanning and conversion to PDF, TIFF conversion, OCR, image endorsement/Bates
 25 stamping, slip sheet preparation, blowback scanning paper documents, media hardware used for
 26 production, electronically stamping Bates numbers, slipsheet preparation, blowback preparation,
 27 and OCR conversion.”).

28 In *Plantronics*, the court found certain e-discovery costs (TIFF conversion and OCR

1 processing) to be recoverable, in part, because the parties had reached an agreement about the
 2 form of production. 2012 WL 6761576, *15-16. TransPerfect and MotionPoint reached a
 3 similar agreement on the form of electronic discovery, agreeing to production in TIFF format,
 4 OCR processing, the provision of suitable load files, the provision of native files where
 5 necessary or requested, and the preservation of metadata. (Joint Case Management Conference
 6 Statement, D.N. 43 at 2-3.) TransPerfect incurred recoverable discovery costs both through the
 7 use of an outside vendor and by performing e-discovery tasks in-house. A spreadsheet of these
 8 costs and true and correct copies of invoices supporting these costs and a true and correct copy of
 9 a summary of in-house work performed by TransPerfect are attached as Amended Exhibit C to
 10 the accompanying Second Declaration of Nikolaus A. Wolosczuk.

11 5. Reproduction and Exemplification of Government Records, and Trial Exhibits

12 Civil L.R. 54-3(d)(1) permits recovery of costs incurred “reproducing and certifying or
 13 exemplifying government records.” Civil L.R. 54-3(d)(4) also permits recovery of costs for
 14 “reproducing trial exhibits . . . to the extent that a Judge requires copies to be provided.” The
 15 Court’s standing order required the production of all trial exhibits in this action. TransPerfect
 16 has incurred necessary costs reproducing government records for the patents-in-suit as well as
 17 certain prior art patents and for providing the Court with copies of trial exhibits. TransPerfect
 18 also incurred costs preparing demonstrative exhibits and other visual aids to assist the jury and
 19 the Court in understanding the issues at trial. These costs are taxable under Civil L.R. 54-
 20 3(d)(5). The costs submitted for Latham & Watkins’ technical analyst are a true and accurate
 21 reflection of the hours billed to TransPerfect for time spent at trial presenting and being available
 22 to present trial exhibits and graphics using courtroom technology. A spreadsheet of these costs
 23 and true and correct copies of invoices supporting these costs as well as a true and correct copy
 24 of a summary of charges incurred for the Latham & Watkins technical analyst are attached as
 25 Amended Exhibit C to the accompanying Second Declaration of Nikolaus A. Wolosczuk.

26 6. Witness Expenses

27 Civil L.R. 54-3(e) allows for the recovery of a witness’s per diem fee, subsistence, and
 28 travel expenses as provided for by 28 U.S.C. § 1821. TransPerfect’s advanced per diem and

1 mileage costs at the time it served subpoenas on MotionPoint and third-party witnesses. These
2 costs are reflected in the same invoices submitted for recovery of the cost of service of
3 subpoenas but are reproduced separately. TransPerfect also incurred additional witness expenses
4 for Eric Silberstein's deposition and for the travel cost of bringing certain witnesses to trial. A
5 spreadsheet of these costs and true and correct copies of invoices supporting these costs are
6 attached as Exhibit D to the First Declaration of Nikolaus A. Woloszczuk. (D.N. 474.)

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8 Dated: December 6, 2013

Respectfully submitted,

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LATHAM & WATKINS LLP

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By /s/ Nikolaus A. Woloszczuk

Nikolaus A. Woloszczuk

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Attorney for Plaintiffs/Counterclaim
Defendants TransPerfect Global, Inc.;
TransPerfect Translations International, Inc.;
and Translations.com, Inc.

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